

**LEGISLATIVE SERVICES AGENCY  
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**FISCAL IMPACT STATEMENT**

**LS 6025**

**BILL NUMBER:** SB 85

**NOTE PREPARED:** Sep 23, 2011

**BILL AMENDED:**

**SUBJECT:** Legal Costs.

**FIRST AUTHOR:** Sen. Banks

**FIRST SPONSOR:**

**BILL STATUS:** As Introduced

**FUNDS AFFECTED:** ☒ **GENERAL**  
**DEDICATED**  
**FEDERAL**

**IMPACT:** State & Local

**Summary of Legislation:** This bill has the following provisions:

- A. It requires a court in a civil action to determine whether a nonprevailing party: (1) brought or continued to litigate an action or asserted a defense that was frivolous, unreasonable, or groundless; or (2) litigated the action in bad faith.
- B. It provides that if the court determines that a nonprevailing party has engaged in such conduct, the court shall require the nonprevailing party to reimburse the prevailing party for reasonable attorney's fees.

**Effective Date:** July 1, 2012.

**Explanation of State Expenditures:** This bill may make it easier for the state to recover certain costs of litigation. The Office of the Attorney General represents the state in cases where the state is a defendant in a civil lawsuit. If the state of Indiana is a defendant in a lawsuit and the state prevails, the Office of the Attorney General could produce a detailed summary of the costs for the case in which it prevailed and potentially recover some or all of the costs.

The bill also provides that the Legislative Services Agency is to prepare legislation for the regular session of the General Assembly to organize and correct statutes affected by this bill.

**Explanation of State Revenues:**

**Explanation of Local Expenditures:** *Effect on Local Governments* – This bill may make it easier for local governments to recover certain costs of litigation. Counties and municipalities either retain attorneys by

contract or have attorneys on staff. If a local government prevails in a lawsuit, the local unit of government may be able to recover some or all of the costs of legal representation.

*Effect on Courts* – This bill would indeterminably increase the number of hearings in civil matters that courts would be required to hold. The number of new hearings would vary by county. Except when the parties to a case settle outside of court, courts would be required to determine, in all civil cases where a party prevailed, whether the nonprevailing party was frivolous, unreasonable, or groundless in their litigation or defense. Under current law, courts already do this when the party to a case files a motion. The number of cases where the courts already hold these hearings is not known.

In CY 2009, the most recent year for which this information is available, the trial courts in Indiana disposed 256,888 civil cases and 205,157 small claims cases. The number of cases where the parties in a case settled outside of court is not known.

**Explanation of Local Revenues:**

**State Agencies Affected:** Attorney General; Legislative Services Agency.

**Local Agencies Affected:** County and municipal governments; trial courts; city and town courts; township courts.

**Information Sources:** *2009 Indiana Judicial Report.*

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